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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,664	03/12/2001	Jill E. Barad	MAT 3C7B	2442

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EXAMINER

CEGIELNIK, URSZULA M

ART UNIT PAPER NUMBER

3712

DATE MAILED: 03/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.  
09/804,664

Applicant(s)

BARAD ET AL.

Examiner  
Urszula Cegielnik

Art Unit  
3712



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Dec 17, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-12, and 14-17 is/are rejected.
- 7) ☒ Claim(s) 6 and 13 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5, 7-12, & 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leicht, Jr.

Leicht, Jr. discloses a customer defined, packaged, personalized toy comprising: a package (26) having a aperture (Figs. 1, 13, & 15); a personalized toy (22) in the package (26), customer-defined identifying materials (24) supported in the package so that the identifying material is visible through the aperture of the package (Figs. 1, 13, & 15); wherein the package has a flap (Figs. 13 & 14: a single piece cover/flap construction 158) covering the personalized toy (22) and customer-defined identifying material removably attached to the flap wherein at least a portion of the identifying material is visible from the exterior of the package (col. 3, lines 64-68 and col. 4, lines 1-16); said flap (158) having an inside and an outside (Figs. 13 & 14), where the inside of the flap (158) faces a personalized toy configured in accordance with a preordered customer's specification (i.e., a customer of a retailer which only wants car number 3); wherein the identifying material (24) includes a customer-defined toy name (i.e., collector's card); wherein the flap is adapted to be opened to reveal the personalized toy (22) (col. 5, lines 36-51); wherein the identifying material includes a story related to the personalized toy (col. 3, lines 67-68 and col. 4, lines 1-5); wherein the identifying material (24) is removable (col. 4, lines 63-68 and col. 5, lines 1-9); further comprising a toy-support card (116, 118) to display the personalized toy (22)

within the package (col. 5, lines 16-20) and wherein the personalized toy is visible through the aperture when the identifying material (24) is removed (Figs. 9).

With regards to the "preordered customer-selected configuration", it is notoriously well known in the art that a select number of each type of personalized toy (22) would be purchased by the venders depending on the specific quantities desired, as determined by demand of the buyers (e.g., collectors). For example, one vender may preorder two number "3" cars, one number "4" car, and five number "6" cars based on the customer-selected configuration (i.e., quantity of personalized toys sold in a certain area/store).

#### *Allowable Subject Matter*

3. Claims 6 & 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


#### *Conclusion*

4. This action has been made Non-Final.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Derris H. Banks whose telephone number is (703) 308-1745 or Fax number (703) 746-3268.

dhb

February 26, 2003

  
DERRIS H. BANKS  
SUPERVISORY PATENT EXAMINER  
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